IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SHAWN J. MARTZ, Petitioner, v. DAVID VARANO, WARDEN, S.C.I. COAL TOWNSHIP, Respondent	: : : : : :	Case No. 3:12-cv-88-KRG-KAP

Report and Recommendation

Recommendation

The pending petition for a writ of habeas corpus should be denied without a certificate of appealability.

Report

Petitioner Shawn Martz has been released from prison but is still on parole on a 5-10 year sentence imposed by the Blair County Court of Common Pleas on June 26, 2008. Martz filed a petition for a writ of habeas corpus in the Middle District, which transferred the matter here on May 2, 2012. One week later I recommended that the petition be dismissed under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts unless Martz amended the petition to state a claim. Martz filed objections that the Court rejected, and the petition was dismissed on May 30, 2012.

A little more than 10 months later, the Court of Appeals vacated and remanded on the theory that either I erred or the Court erred in citing "information beyond what [Martz] filed." As was expressly stated at docket no. 10, that information was the transcript of a hearing under Pennsylvania's Post Conviction Relief

Act (PCRA), 42 Pa.C.S.§ 9541 et seq., that Martz himself had attached to his complaint in another case.

By the time the mandate issued Martz had been released. Four days after receipt of the mandate I ordered the respondent to file a response. When after about two months the respondent had not done so I dutifully spelled out what documents the respondent needed to file. The respondent thereupon filed Martz's PCRA petition, the transcript of the PCRA hearing, the brief Martz filed in the state court, and the Pennsylvania Superior Court opinion affirming the denial of the PCRA petition.

As I stated previously, to obtain a writ of habeas corpus under 28 U.S.C.§ 2254(d)(2) as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub.L. No. 104-132, 110 Stat. 1214, April 24, 1996, Martz must show that the state court's adjudication of his federal claim:

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

An unreasonable determination of the facts is one that is more than erroneous: it is one so erroneous that reasonable minds could not disagree that it is wrong. See Wood v. Allen, 558 U.S. 290, 301 (2010). Stated another way, the federal court cannot set aside a reasonable state court determination of the facts in favor of its own interpretation of the record. Burt v. Titlow, 134 S.Ct. 10, 16-17 (2013).

Martz pleaded guilty to numerous burglary charges in June 2008 and was sentenced by Judge Doyle on June 26, 2008, to a sentence of 5-10 years imprisonment under a negotiated plea agreement that included a term that petitioner be allowed to self-report on September 8, 2008. For some reason the participants in the state court proceedings keep calling this provision a furlough. On the same day, Martz had a Gagnon II hearing in which Judge Doyle revoked and reimposed a probationary sentence imposed in 2005 for theft charges.

About two weeks after his sentencing, Martz was in the hospital for what Thomas Shea of the Blair County Adult Probation Office said he believed to be a heroin overdose; after Martz was released from the hospital Shea arrested Martz on July 17, 2008 for allegedly violating the no drug-use condition of the 2005 sentence. Martz was taken to the Blair County Prison. About a month later, Martz was sent to the state prison system to serve the 2008 burglary sentence without ever having had a Gagnon I hearing on the 2005 sentence.

Martz filed a timely handwritten PCRA petition stating one claim: that his arrest and incarceration constituted a "revocation of his furlough" and thereby violated the plea agreement in the 2008 burglary cases. As relief Martz sought "a new furlough & new report date" or the withdrawal of his guilty plea.

Judge Doyle appointed Tim Burns, Esquire, as counsel for Martz and held a hearing on August 12, 2009, at which Thomas Shea testified that he arrested Martz because he believed Martz to have used heroin in violation of the term of probation on the 2005 sentence. Everyone, including counsel for Martz, discussed on the record their recognition that the arrest had nothing to do with the 2008 charges and that the county probation office would have had no jurisdiction over the 2008 sentence because its length meant that it would fall under the jurisdiction of the Pennsylvania Board of Probation and Parole. Hoping to salvage something for his client, Burns suggested at the PCRA hearing that whether Martz was in fact using heroin might determine whether there was a violation of due process in Shea's arrest of Martz and the handling of the probation in the 2005 cases. Burns turned down Judge Doyle's offer to hold a Gagnon hearing on the 2005 charges that same day. If as it appears the probation on those sentences was never revoked, then Burns' decision was one that resulted in a benefit to Martz.

As for the 2008 plea and sentence, however, Judge Doyle found that "the cutting short of the furlough had nothing to do with the July [sic] 26th, 2008 guilty plea or sentencing" and issued an opinion the same day denying Martz' PCRA petition. Martz, represented by Burns, appealed and presented only one claim to the Pennsylvania Superior Court: that Martz's plea was not knowing and competent "as it was contingent upon him receiving a furlough which did not occur." The Pennsylvania Superior Court affirmed Judge Doyle's denial of relief in September 2011. Commonwealth v. Martz, No. 1758 WDA 2009 (Pa.Super. September 7, 2011). The Pennsylvania Superior Court expressly found that the District Attorney's office had nothing to do with Martz's arrest and detention, and that "[t]o say the Commonwealth breached its agreement in the present case under these circumstances would be tantamount to giving Appellant license to violate a prior county probation without jeopardizing his furlough in a state case." The Pennsylvania Supreme Court denied review in February 2012.

The PCRA transcript and Martz's appellate brief confirm that Martz fairly presented one claim to the state courts, a Santobello claim, see Santobello v. New York, 404 U.S. 257, 262 (1971)("[A] constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.") that the District Attorney's office breached the 2008 plea agreement by not honoring the furlough provision.

The Pennsylvania Superior Court aptly observed that the term in the plea agreement that allowed Martz to self-report in September 2008 did not give Martz immunity from arrest. The Superior Court also found from its own review of the PCRA transcript that as a matter of fact the Blair County District

Attorney's office was not involved in the petitioner's arrest on the 2005 sentence, and so did not breach the 2008 plea agreement. Martz presents no allegations or evidence that would indicate that this finding was wrong, much less unreasonably wrong. To the extent Burns or Martz believed that it was an issue whether Martz in fact used heroin in July 2008, that issue is relevant only to the question whether his probation on the 2005 theft charges was properly revoked, an issue that is irrelevant to the PCRA petition and this habeas petition attacking Martz's plea and sentence on the 2008 burglary charges. The petition attacking that sentence should be denied. Because there is no colorable claim of a violation of Martz' constitutional rights in the execution of the plea agreement and sentence on the 2008 burglary charges, no certificate of appealability should be issued either.

Pursuant to 28 U.S.C.§ 636(b)(1), the parties are given notice that they have fourteen days to file written objections to this Report and Recommendation.

DATE: 30 December 2013

Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel of record and by U.S. Mail to:

Shawn J. Martz
5424 2nd Avenue
Pittsburgh, PA 15207